

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

May 30, 2006

In Reply Refer To:  
Northern Natural Gas Company  
Docket Nos. RP06-339-000 and 001

Northern Natural Gas Company  
1111 South 103rd Street  
Omaha, NE 68124-1000

Attention: Mary Kay Miller, Vice President  
Regulatory and Government Affairs

Reference: Discount Non-Conforming Agreement with Flint Hills

Ladies and Gentlemen:

1. On May 1, 2006, Northern Natural Gas Company (Northern) filed a non-conforming discounted rate agreement for service with Flint Hills Resources, L.P. (Flint Hills). Under the agreement, Northern will transport up to 102,000 Dt per day for Flint Hills under Rate Schedule TFX. The discounted rate under the agreement is \$0.155 per Dt (combined demand and reservation charge) for the first 75,000 Dt per day, and \$0.100 per Dt (combined reservation and demand charge) for any volumes above 75,000 Dt. The agreement becomes effective on June 1, 2006, and terminates on March 31, 2011. Northern includes with its filing a First Revised Sheet No. 66D to its FERC Gas Tariff, Fifth Revised Volume No. 1, to add the Flint Hills agreement to its tariff list of non-conforming agreements. On May 8, 2006, Northern filed a Substitute First Revised Sheet No. 66D to correct errors in its original tariff sheet. Northern requests a June 1, 2006, effective date for its revised tariff sheet.

2. Northern states that its discounted agreement supercedes certain existing agreements with Flint Hills. Northern states that its agreement contains two non-conforming provisions. The first is a provision that would allow Northern and Flint Hills to renegotiate agreement terms should the Commission require any change to the proposed agreement or to Northern's tariff. The second non-conforming provision provides that "Flint Hills agrees to support Northern's proposed transportation rates provided herein as being necessary to retain its load on Northern's system." Northern asserts that these provisions do not affect the quality of service to Flint Hills and do not present a substantial risk of undue discrimination.

3. The Commission noticed Northern's filing on May 4, 2006, allowing for protests as provided by section 154.210 of the Commission's regulations. The Commission noticed Northern's amended filing on May 11, 2006. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2005), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. The Northern Municipal Distributors Group and the Midwest Region Gas Task Force Association (Distributors) filed a protest and request for rejection, or in the alternative, a request for technical conference and hearing, which we discuss below. Northern filed an answer, arguing that its agreement conforms to Commission policy. Generally, the Commission does not permit answers to protests (see 18 C.F.R. § 385.213 (2004)). However, the Commission will accept Northern's answer as it has provided information that assists us in our decisionmaking.

4. We accept Northern's non-conforming agreement with Flint Hills as proposed. Northern's non-conforming provisions do not present a substantial risk of undue discrimination among shippers and do not affect the quality of service Northern provides shippers. Further, we accept Northern's Substitute First Revised Sheet No. 66D effective June 1, 2006, as proposed, and reject Northern's First Revised Sheet No. 66D as moot.

5. Distributors raise numerous concerns with Northern's agreement. Generally, Distributors' concerns are identical to the issues they raised in other recent Northern non-conforming discount agreement filings, including those with Northern States Power Company – Minnesota,<sup>1</sup> Metropolitan Utilities District,<sup>2</sup> and CenterPoint Energy Minnesota Gas.<sup>3</sup> All determinations made in the instant filing are consistent with Commission findings in these previous orders.

6. First, Distributors protest the magnitude of discounts Northern proposes to offer Flint Hills, asserting they are anti-competitive and discriminatory. Distributors express concerns that smaller captive customers may end up subsidizing these discounts through discount adjustments in a future section 4 rate proceeding. Distributors also assert that

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<sup>1</sup> *Northern Natural Gas Co.*, 115 FERC ¶ 61,146 (2006).

<sup>2</sup> *Northern Natural Gas Co.*, 111 FERC ¶ 61,287 (2005), *order on reh'g* 113 FERC ¶ 61,119 (2005).

<sup>3</sup> *Northern Natural Gas Co.*, 110 FERC ¶ 61,321 (2005), *order on reh'g*, 111 FERC ¶ 61,379 (2005), *order on reh'g*, 113 FERC ¶ 61,188 (2005), *appeal pending*, *Northern Municipal Distributors Group and Midwest Gas Task Force Association v. FERC*, (D.C. Cir.), Case Nos. 05-1468 and 06-1016.

the Commission must address the issue at this time in order to clearly delineate the extent to which captive and other shippers will be required to subsidize the discounts and other benefits Northern provides to Flint Hills. Distributors argue this is necessary since, pursuant to a settlement in Northern's previous section 4 rate proceeding,<sup>4</sup> Northern cannot file another rate case with rates to be effective prior to November 1, 2007.

7. Section 284.10(b)(5)(ii)(A) of the Commission's regulations expressly permits a pipeline to "charge an individual customer any rate that is neither greater than the maximum rate nor less than the minimum rate on file for that service." Consistent with that regulation, Northern's tariff sets forth both a just and reasonable maximum rate and a minimum rate for each service. Accordingly, the discounted rates Northern has agreed to provide Flint Hills do not deviate from Northern's tariff, and thus do not require Commission approval. Rather, the Commission has already authorized those discounts through its Part 284 regulations and its approval of Northern's tariff. The only aspects of Northern's contracts with Flint Hills that require approval in this proceeding are the material deviations from Northern's form of service agreement.

8. Second, Distributors argue that Northern's filing lacks the factual support that sections 154.204 and 154.600 of the Commission's regulations require. These regulations delineate what items a pipeline must include in any filing to revise its rates or tariff terms and conditions. Distributors also argue that Northern should have included with its filing the agreements that the instant agreement superceded. Distributors also assert that Northern needs to justify its threat of a bypass. We disagree with Distributor's contention that Northern did not file adequate information. Northern included with its filing the actual non-conforming discount agreement with Flint Hills. This provided the Commission with sufficient information to judge the proposal on its merits without the need for additional information or a technical conference.

9. Third, Distributors argue that the instant filing is not consistent with the principle that capacity should go to the shipper that values it most because there has been no competitive bidding for the subject capacity. Distributors argue there has been no posting of the capacity and that such posting would show whether the discounts Northern offered to Flint Hills are reasonable, and whether there are other parties that are willing to pay more for some or all of the subject capacity. Therefore, Distributors argue that if the Commission does not reject the discount agreement outright, the Commission should require Northern to hold a capacity auction for the capacity at issue.

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<sup>4</sup> 111 FERC ¶ 61,444 (2005).

10. Consistent with previous findings, the Commission will not require Northern to auction the subject capacity.<sup>5</sup> Northern is entitled to allocate its capacity in a manner consistent with its tariff. Because Northern's tariff does not require that capacity be auctioned, the Commission will not require Northern to submit the subject capacity to auction. Further, while the Commission articulated its goal of placing capacity in the hands of those that value it most highly, the Commission assumes that the pipeline will always seek the highest possible rate from non-affiliated shippers, since it is in its own economic interest to do so. Accordingly, the Commission has not required pipelines to implement allocation mechanisms utilizing methodologies such as the Net Present Value (NPV) process which would allocate capacity to the shipper bidding the highest amount to the pipeline. Consistent with this policy, Northern's existing tariff permits it to hold open seasons for capacity based upon the NPV allocation policy but does not require the use of such a methodology.

11. Fourth, Northern includes a regulatory right of first refusal (ROFR) provision as section 4.f. of its service agreement with Flint Hills. Distributors argue that the discount agreement may violate the Commission's regulations and Northern's tariff with respect to the exercise of ROFR and rollover rights. Specifically, Distributors assert that Northern's filing does not provide enough information to fully determine whether Northern complied with the grandfathered rollover rights provisions set forth in its TF Rate Schedule. Further, it argues that Northern has not shown that its agreement complies with the ROFR provisions set forth in section 52 of its General Terms and Conditions (GT&C).

12. We accept Northern's proposed ROFR provision. Section 58 of Northern's GT&C allows Northern and a shipper to agree to include ROFR rights in service agreements.<sup>6</sup> This right is available to all shippers on a not unduly discriminatory basis. Here, Northern is merely incorporating a ROFR into its agreement with Flint Hills pursuant to section 58 of its GT&C. Accordingly, the Commission finds this a permissible conforming provision.

13. Finally, Distributors ask that the Commission reject the following non-conforming provision that Northern proposes in its agreement with Flint Hills: "Flint Hills agrees to support Northern's proposed transportation rates provided herein as being necessary to retain its load on Northern's system."<sup>7</sup> Distributors argue that Northern may attempt to

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<sup>5</sup> *Northern Natural Gas Co.*, 110 FERC ¶ 61,321 at P23 (2005), *order on reh'g*, 111 FERC ¶ 61,379 at P 37-39 (2005), *order on reh'g*, 113 FERC ¶ 61,188 at P28 (2005).

<sup>6</sup> Section 58 states that under Rate Schedules TF, TFX, and FDD, Northern and a Shipper may agree to include ROFR rights in agreements.

<sup>7</sup> Northern transmittal letter at 1.

use this provision as its sole support to meet its initial burden under the Commission's selective discounting policy to prove that the proposed discount was necessary to meet competition. Further, they express concern that if Northern is able to secure similar agreements from all discount customers, Distributors may be the only party left actively opposing discount adjustments in any future rate case.

14. Although the subject provision is a material deviation from Northern's form of service agreement, we find it acceptable. The provision would not affect the service Northern provides to Flint Hills, nor the quality of service it provides to other shippers. Further, consistent with Commission findings in *Northern*,<sup>8</sup> our acceptance of this provision does not represent a Commission finding as to whether competition required Northern to offer the instant discounts, thereby justifying a discount adjustment in Northern's next section 4 rate proceeding. Should Northern seek such a discount adjustment in its next rate case, it will retain the ultimate burden of proof. All parties will be free to argue their positions, and the Commission will decide the issue based on the record developed in that proceeding.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

cc: All Parties

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<sup>8</sup> *Northern Natural Gas Co.*, 115 FERC ¶ 61,146 (2006).